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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

James Cunningham
Proc. I

FILE: B-188141

DATE: February 11, 1977

MATTER OF: The Small Business Administration; Najol, Inc.

DIGEST:

Decision as to whether sale should be set-aside for small business is within authority of selling agency, not GAO. Consequently, request that GAO be involved in set-aside process--via granting of "hold-up" relief pending resolution of set-aside dispute--will not be considered.

The Associate Administrator for Procurement Assistance, Small Business Administration, has protested against what the Administrator regards as an "improper award under Agricultural Stabilization and Conservation Service (United States Department of Agriculture) announcement PV-S-CPO-1, Invitation No. 2"--a crude peanut oil sale.

The Administrator explains that SBA had previously requested the Department of Agriculture to: make a partial small business set-aside under invitation No. 2; make future advertisements of crude peanut oil sales on a small business set-aside basis; and delay future sales until the SBA's request for the set-asides had been decided. The Administrator states that SBA's protest to our Office "does not involve the question of the appropriateness of a small business set-aside on this Government sale," but rather the failure of the Department to decide the request for the set-aside prior to making award under sale -CPO-1. Consequently, the Administrator requests that we "recommend to the Department that further crude peanut oil commodity advertisements be deferred pending resolution of [the] request for small business set-aside action." Thus, the Administrator's request involves only "hold-up" relief.

Najol, Inc., has also informed us that it supports the Administrator's protest.

We have held that nothing in the Small Business Act or regulations makes it mandatory that there be a set-aside for small business as to any particular procurement (or sale) and that the decision whether a procurement (or sale) should be set aside is within the authority of the contracting agency, not GAO. Groton Piping Corporation and Thames Electric Company (joint venture), B-185755, April 12, 1976, 76-1 CPD 247.

B-183141

Since the fulfillment of the Administrator's request would necessarily involve GAO in the set-aside process via consideration of the requested "hold-up" relief, it is our view that we do not have a proper basis to consider the protest.

Paul G. Dembling
Paul G. Dembling
General Counsel